

CORRECTED

EXHIBIT C

1
2 IN THE UNITED STATES DISTRICT COURT
3 FOR THE DISTRICT OF DELAWARE
4 - - -
5

6 IN RE: ADAMS GOLF, INC. :
7 SECURITIES LITIGATION :
8

9 ORAL DEPOSITION
10 OF
11 EDWARD NECARSULMER, III
12 Monday, August 7, 2006
13 - - -

14 Oral deposition of EDWARD NECARSULMER,
15 III, held at the offices of SIMPSON THACHER &
16 BARTLETT, LLP, 425 Lexington Avenue, New York,
17 New York, commencing at 12:08 p.m., reported
18 by Pamela Harrison, RMR, CRR, CSR and Notary
19 Public.
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22

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2 variables. Some of the ones you've
3 mentioned are variables -- are valid
4 ones, but there are -- just the
5 existence of the fact that it was a
6 fast growing company or it was a new
7 company would not be enough for me to
8 direct the team to do something
9 different.

10 BY MR. LEWIS:

11 Q. What variables, if any, would
12 cause you to direct the team to do something
13 different in due diligence?

14 MR. GLUCKOW: I'm going to object
15 to the form and object on the ground
16 that it's vague and ambiguous and quite
17 overbroad.

18 But you can answer.

19 THE WITNESS: I mean it's a
20 situation-by-situation issue. I think
21 that -- and I can only, you know,
22 really respond to it anecdotally if I
23 can think of some appropriate
24 anecdotes. But I guess my point is,
25 without belaboring this, is you look at

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1 EDWARD NECARSULMER, III
2 organized in terms of your ability to get
3 documents and things that were on point that
4 would go right to your organizational outline,
5 where if they hadn't, you might have to really
6 help them set up the process.

7 Q. Would you agree that in an
8 initial public offering there is a strong
9 affirmative duty of disclosure?

10 MR. GLUCKOW: Object to the
11 form. Vague and ambiguous. Calls for
12 a legal conclusion.

13 You can answer.

14 THE WITNESS: Yes.

15 BY MR. LEWIS:

16 Q. Would you agree that in
17 conducting due diligence it is necessary for the
18 due diligence team to continue its investigation
19 of the issuer up to and including the effective
20 date of the registration statement?

21 A. Yes.

22 Q. And a due diligence
23 investigation would be inadequate if the
24 underwriter did not do that?

25 MR. GLUCKOW: Object to the

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1 EDWARD NECARSULMER, III
2 each situation and hopefully -- you
3 know, if you are managing the process,
4 you look at each situation and
5 hopefully you figure out, you know,
6 what you need to do to satisfy your
7 commitment committee, yourself, and the
8 marketplace. And there are really no
9 other rules specific -- you know,
10 templates I can honestly look at you
11 and offer beyond that.

12 BY MR. LEWIS:

13 Q. Have you ever had the experience
14 of adjusting the due diligence that you were
15 conducting on a company because the company had
16 management that had not had long experience in
17 running a public company?

18 A. Yes.

19 Q. And why did you do that?

20 A. Well, because simply as a matter
21 of mechanics. In many cases if a company had
22 done other offerings or was -- let's say had
23 done other offerings or had significant -- had
24 done private equity financings or other
25 transactions, typically they might be more

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1 EDWARD NECARSULMER, III
2 form. It calls for a legal conclusion.

3 You can answer.

4 THE WITNESS: I mean, the easy
5 answer is yes, but -- well, okay, let
6 me just leave it at yes.

7 BY MR. LEWIS:

8 Q. Is it your understanding as a
9 non-lawyer that one of the duties of
10 underwriters is to deal fairly with the
11 investing public?

12 MR. GLUCKOW: Object to the form.

13 You can answer.

14 THE WITNESS: Absolutely.

15 BY MR. LEWIS:

16 Q. Isn't that sometimes referred to
17 as the shingle theory?

18 A. I'm not familiar with that.

19 Q. I take it from your initial
20 report that one of your beliefs is that an
21 underwriter has an obligation to conduct a
22 reasonable investigation in an IPO?

23 A. Yes.

24 Q. And there is a long tradition
25 since the securities laws were enacted in the

16 (Pages 58 to 61)

<p style="text-align: right;">Page 142</p> <p>1 EDWARD NECARSULMER, III</p> <p>2 Q. Okay. Is it your understanding</p> <p>3 that these are notes of a telephone conversation</p> <p>4 rather than that of a meeting?</p> <p>5 A. That would be my surmise, but</p> <p>6 it's only that.</p> <p>7 Q. And what is that based on?</p> <p>8 A. Based on the way it's almost</p> <p>9 always a so-called bringdown call because the</p> <p>10 people are not usually in the same place.</p> <p>11 Q. Is there, in your experience, a</p> <p>12 standard format for a bringdown call?</p> <p>13 A. No. In my experience, it's</p> <p>14 quite informal; it's tick off three or four</p> <p>15 points, anything we ought to be aware of. It</p> <p>16 can be combined with an update of where you are</p> <p>17 in terms of effectiveness, other forms need to</p> <p>18 be filed. So generally it kind of takes this</p> <p>19 form.</p> <p>20 Q. Did you see anything in this</p> <p>21 document when you reviewed it that you believe</p> <p>22 referred either to Costco or to gray marketing</p> <p>23 more broadly?</p> <p>24 MR. GLUCKOW: The document speaks</p> <p>25 for itself.</p>	<p style="text-align: right;">Page 144</p> <p>1 EDWARD NECARSULMER, III</p> <p>2 that there's nothing that I'm not</p> <p>3 seeing. Correct?</p> <p>4 BY MR. LEWIS:</p> <p>5 Q. I think your assumption is</p> <p>6 absolutely correct.</p> <p>7 A. With that assumption, the answer</p> <p>8 is there's nothing referring to either of those</p> <p>9 subjects.</p> <p>10 (Whereupon, documents were</p> <p>11 marked, for identification purposes, as</p> <p>12 Exhibit 325 and Exhibit 326.)</p> <p>13 BY MR. LEWIS:</p> <p>14 Q. I'm going to hand you two</p> <p>15 exhibits together, 325 and 326.</p> <p>16 MR. LEWIS: Off the record.</p> <p>17 (A discussion was held off the</p> <p>18 record.)</p> <p>19 BY MR. LEWIS:</p> <p>20 Q. 325 is a copy of documents that</p> <p>21 you referred to in your rebuttal report and some</p> <p>22 of those pages -- there were a few pages not</p> <p>23 included because some of the Adams advertising</p> <p>24 materials were double-sided and someone, not</p> <p>25 doing their due diligence in the copying</p>
<p style="text-align: right;">Page 143</p> <p>1 EDWARD NECARSULMER, III</p> <p>2 But you can answer.</p> <p>3 THE WITNESS: No.</p> <p>4 BY MR. LEWIS:</p> <p>5 Q. I previously showed you Exhibit</p> <p>6 160 which was the July 14, 1998, summary of due</p> <p>7 diligence conducted by the Lehman Brothers Adams</p> <p>8 Golf team.</p> <p>9 Did you see anything in Exhibit</p> <p>10 198 which referred to either gray marketing or</p> <p>11 Costco distribution?</p> <p>12 MR. GLUCKOW: You said 198.</p> <p>13 BY MR. LEWIS:</p> <p>14 Q. I'm sorry; that was the one that</p> <p>15 has been variously numbered as 160 and 198.</p> <p>16 So the question is, since you</p> <p>17 have 160 in front of you, whether you saw</p> <p>18 anything in the summary of due diligence</p> <p>19 contained in Exhibit 160 that you believe</p> <p>20 referred to either Costco or gray marketing</p> <p>21 issues?</p> <p>22 MR. GLUCKOW: The document speaks</p> <p>23 for itself.</p> <p>24 But you can answer it.</p> <p>25 THE WITNESS: I'm assuming Page 3</p>	<p style="text-align: right;">Page 145</p> <p>1 EDWARD NECARSULMER, III</p> <p>2 process, left those pages out when the document</p> <p>3 was compiled, so those missing pages are</p> <p>4 contained in Exhibit 326.</p> <p>5 You'll see that the documents</p> <p>6 that are compiled in this exhibit include due</p> <p>7 diligence questionnaires, sales data,</p> <p>8 advertising data, and, to the best of my</p> <p>9 knowledge, these are all the pages that you</p> <p>10 referred to in your rebuttal report.</p> <p>11 MR. GLUCKOW: Just to be clear,</p> <p>12 we haven't obviously checked to make</p> <p>13 sure this is the case, but what you are</p> <p>14 saying is when you combine 325 and 326,</p> <p>15 all of the documents cited in the</p> <p>16 rebuttal report should be included in</p> <p>17 325 and 326.</p> <p>18 MR. LEWIS: They should be. And</p> <p>19 the ones in 326 are all</p> <p>20 advertising-type documents which go</p> <p>21 sort of into the span of documents in</p> <p>22 the middle that have Adams Tight Lies</p> <p>23 advertisements and humorous items about</p> <p>24 Barney and a press release here and</p> <p>25 there.</p>

<p style="text-align: right;">Page 146</p> <p>1 EDWARD NECARSULMER, III</p> <p>2 BY MR. LEWIS:</p> <p>3 Q. At the risk of beating the horse</p> <p>4 dead, again, to your knowledge, is there</p> <p>5 anyplace in any of the pages referred to in your</p> <p>6 rebuttal report which touched on gray marketing</p> <p>7 or Costco distribution?</p> <p>8 MR. GLUCKOW: And again, you are</p> <p>9 focused on the UND production which we</p> <p>10 have in front of us and 325 and 326,</p> <p>11 not on deposition testimony?</p> <p>12 MR. LEWIS: That is correct.</p> <p>13 THE WITNESS: Then I would say --</p> <p>14 I was thinking aloud; excuse me. Let</p> <p>15 me just make sure.</p> <p>16 To the best of my knowledge, that</p> <p>17 is correct.</p> <p>18 BY MR. LEWIS:</p> <p>19 Q. Moving forward chronologically,</p> <p>20 I will show you Exhibit 215 which is a Lehman</p> <p>21 Brothers memorandum, facsimile, suggested</p> <p>22 outline, and list of concerns. The transmittal</p> <p>23 date on the fax is July 29, 1998.</p> <p>24 Did you review this document?</p> <p>25 A. I did see this document.</p>	<p style="text-align: right;">Page 148</p> <p>1 EDWARD NECARSULMER, III</p> <p>2 determine how the information came into Lehman's</p> <p>3 possession that caused someone to write the</p> <p>4 words that appear on the page I read to you?</p> <p>5 MR. GLUCKOW: Objection to the</p> <p>6 form. It mischaracterizes the</p> <p>7 testimony.</p> <p>8 But you can answer.</p> <p>9 THE WITNESS: I would add that,</p> <p>10 you know, since this is post IPO, it's</p> <p>11 highly plausible that's -- that this</p> <p>12 came through an investor or type of</p> <p>13 question to the research analyst.</p> <p>14 BY MR. LEWIS:</p> <p>15 Q. Can you explain why you say</p> <p>16 that?</p> <p>17 A. Well, what happens often is that</p> <p>18 as you are talking about the story or the stock,</p> <p>19 particularly if the stock is, you know, either</p> <p>20 going up or down a lot and therefore is the</p> <p>21 subject, research analysts are constantly</p> <p>22 talking to their customers who are the --</p> <p>23 they're counterpart analysts or portfolio</p> <p>24 managers at usually large financial</p> <p>25 institutions, or it could be an officer manager</p>
<p style="text-align: right;">Page 147</p> <p>1 EDWARD NECARSULMER, III</p> <p>2 Q. And did you see, on the third</p> <p>3 page of the exhibit, the item "Discounting -</p> <p>4 Tight Lies have been seen in many Costcos for</p> <p>5 \$146? How is product getting there? What is</p> <p>6 Adams Golf doing about it?"</p> <p>7 A. I have seen that.</p> <p>8 Q. Have you seen any documents that</p> <p>9 explain to you how that information came into</p> <p>10 the possession of the underwriters?</p> <p>11 A. I had not seen a document</p> <p>12 documentary of it, no.</p> <p>13 Q. Do you recall any testimonial</p> <p>14 evidence?</p> <p>15 A. It is my recollection that</p> <p>16 either Picchi or Lantier, who were the two</p> <p>17 Lehman equity research analysts, did refer to</p> <p>18 this in their deposition testimony. I can't</p> <p>19 tell you which one. I would say Lantier, if I</p> <p>20 had to make a determination.</p> <p>21 L-A-N-T-I-E-R. P-I-C-C-I, I</p> <p>22 think. It may be P-I-C-C-H-I.</p> <p>23 Q. So that other than the</p> <p>24 deposition transcripts of the equity analysts,</p> <p>25 you are unaware of any means by which one could</p>	<p style="text-align: right;">Page 149</p> <p>1 EDWARD NECARSULMER, III</p> <p>2 someplace, and a lot of the process is feedback,</p> <p>3 and somebody said, you know, what do you think</p> <p>4 is going on? I heard, you know, from my golf</p> <p>5 pro or a guy at Fidelity asked me about... I</p> <p>6 mean, in my experience a lot of the information</p> <p>7 is actually incoming, so it could very well have</p> <p>8 come through that way as well.</p> <p>9 Q. Let me show you what I've marked</p> <p>10 previously as 217. This is a teleconference</p> <p>11 script dated August 5, 1998, sent to Olga</p> <p>12 Pulido-Crowe and Pat Walravens,</p> <p>13 W-A-L-R-A-V-E-N-S, from the desk of Patty</p> <p>14 Walsh. And at Page 40671, you will see a</p> <p>15 reference, under the heading of Discounting, to</p> <p>16 "Tight Lies have been seen in many Costcos for</p> <p>17 \$146. How is the product getting there?" and an</p> <p>18 answer is given.</p> <p>19 Does anything in this document --</p> <p>20 strike that.</p> <p>21 Do you have any reason to</p> <p>22 believe that the information that's contained</p> <p>23 on Page 40670, which is similar to the</p> <p>24 information we saw in the "concerns" box on</p> <p>25 Exhibit 215, came as a surprise to the</p>